

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, March 1, 2005

Division One

A102155 – The People v. Melvin Simmons.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication)

Division Two

A102121 – Beck Properties, Inc., v. City of Brentwood, et al.; Patricia A. Mauldin.

The judgment is affirmed. Mauldin is awarded her costs on this appeal. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication)

A103498 – The People v. Xavier Henry Holman.

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication)

Tuesday, March 1, 2005 (continued)

Division Two

A103716 – The People v. Edilberto Saphao.

The Court: Order Modifying Opinion and Denying Rehearing. It is ordered that the opinion filed herein on February 10, 2005, be modified as follows: (See order) There is no change in the judgment. Respondent's petition for rehearing is denied. Kline, P.J. (Certified for Publication)

A104615 – The People v. Howard Bizzell.

The judgment is affirmed. This case is remanded to the trial court for resentencing on the conviction for attempted murder in a manner consistent with *Blakely* and for correction of the other sentencing errors identified herein. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication)

A106574 – The People v. Ryan William Fulwider.

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication)

A106151 – Afsaneh Nassiri (Baroumand) v. Contra Costa Regional Medical Center, et al.

The judgment is reversed and this case is remanded to the trial court for further proceedings consistent with this decision. The parties are to bear their own costs on appeal. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication)

Division Three

A103269 and A105131 – County of Solano v. Lionsgate Corporation.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT

DIVISION FOUR

Tuesday, March 1, 2005

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Kay, P.J., Sepulveda, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Vincent Chambers, Bailiff.

A104529 People
 v.
 Mark Anthony Serrano
Cause called. Dennis P. Riordan argued for appellant Serrano. Stan Helfman argued for respondent. Cause submitted.

A106723 Dominic O'Connor
 v.
 Ofer Baharav
Cause called. Arthur Brunwasser argued for appellant Baharav. Stanley E. Pond argued for respondent. Cause submitted.

At this point, the Court reconstituted itself to include Reardon, Acting P.J., Sepulveda, J. and Rivera, J.

A106793 People
 v.
 Leon L.
Cause called. Gerald Clausen argued for appellant Leon L. Martin S. Kaye argued for respondent People. Cause submitted.

A101437 Mary Miles
 v.
 Sierra Club
Cause called. A. Charles Dell'Ario argued for appellant Miles. Michael Ward argued for respondent. Cause submitted.

A104951 North Pacifica, LLC.
A106446 v.
A107347 City of Pacifica
Causes called. Natalie West argued for appellant City. Jaqueline Pope and Keith Fromm argued for respondent. Causes submitted.

The Court adjourned at 11:08 a.m.

Wednesday, March 02, 2005

Division One

A106424 – Soraya Pourian v. J.C. Penney Company, Inc.

The trial court's rulings are affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

A104497 – Janet Robbins v. Joseph Alibrandi, et al.

By the Court: The petition for rehearing is denied. Marchiano, P.J.

Division Two

A104038 – The People v. Wendy Martin.

The judgment is reversed and the matter remanded to the superior court with directions to dismiss case No. CR100614. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

A105098 – In re Bobby B., a Person Coming Under the Juvenile Court Law. The People v. Bobby B.

The judgment is reversed and the matter remanded to the trial court with directions to delete the two improper conditions from its probation order. However, and bearing in mind appellant's poor prior record of compliance with conditions of probation, the court may substitute any conditions which it feels necessary and appropriate, provided such are consistent with the principles articulated above. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication)

Division Three

A100606 and A101914 – Noreen Cardinale v. Daniel R. Miller, Jr.

By the Court: The petition for rehearing is denied. McGuinness, P.J.

A103303 – The People v. Warren Kevin Charles.

By the Court: The petition for rehearing is denied. McGuinness, P.J.

A106957 – Preserve Country Neighborhoods v. Cold Creek Compost, Inc. et al.

The appeal is dismissed. Defendants' request for sanctions is denied. Because it is moot, we also deny their request for a stay of briefing. The parties are to bear their own costs on appeal. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, March 2, 2005

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuinness P.J., Corrigan, J., Pollak J., and F. Abad, Deputy Clerk.

A104076 Insurance Commissioner of the State of California,
A104077 v.
Golden Eagle Insurance Company,
Pauli Systems, Inc.
Cause called and argued by E. Gerard Mannion, counsel for appellant, and Richard Edwards, counsel for respondent. Cause ordered submitted.

A102479 Hansjoachim Neis,
v.
The Regents of the University of California.
Cause called and argued by Daniel Siegel, counsel for appellant, and Christopher Patti, counsel for respondent. Cause ordered submitted.

Justice Corrigan left the bench and Justice Parrilli joined the bench.

A104638 Mark J. Maccarra Builders, Inc., et al.,
A105641 v.
Ron Vidal, et al.
Cause called and argued by Margaret Seltzer, counsel for appellants, Daniel Hager, counsel for respondents Lanahan & Reilley, et al., and Michele Trausch, counsel for respondents Ron Vidal, et al. Cause ordered submitted.

Court adjourned.

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, March 3, 2005

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Swager, J., and Margulies, J.; and B. Robbins, Deputy Clerk.

A101953 Colin Scott,
v.
Emily Scott.
Cause called and argued by Colin Scott, appellant in pro per, and Ann F. VanDerPol, counsel for respondent. Presiding Justice Marchiano denied Mr. Scott's application requesting permission to submit exhibit, filed February 25, 2005, and denied the application for leave to file amici curiae brief in support of Colin Scott, filed March 2, 2005. Cause ordered submitted.

A105988 Henry L. Garcia,
v.
Prentice & Scott, et al.
Cause called and argued by Athena Roussos, counsel for appellant, and Peter Linn, counsel for respondent. Cause ordered submitted.

A106607 Douglas E. Freeman.
v.
Palisades Trusts, et al..
Cause called and argued by James R. Rose, counsel for appellants, and Randall E. Strauss, counsel for respondent, via teleconference. Cause ordered submitted.

Court adjourned.

No cases were scheduled to be heard on Friday, March 4, 2005.

Wednesday, March 02, 2005 (continued)

Division Five

A104925 – Estate of Rhea W. Burr, Deceased. Michener Burr et al., v. J.T. Bates.

The order of the trial court is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J.
(Not for Publication)

Thursday, March 3, 2005

Division One

**A101956 – In re Nyala W., et al., Persons Coming Under the Juvenile Court Law.
Marin County Department of Health and Human Services v. Winnfred, et al.**

The Court: Order Modifying Opinion and Denying Rehearing and no change in judgment. It is ordered that the opinion filed herein on February 3, 2005, be modified in the following particulars: (See Order). There is no change in the judgment. The petitions for rehearings are denied. Marchiano, P.J. (Not for Publication)

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, March 3, 2005

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., and Swager, J.; and I. Calanoc, Deputy Clerk.

A104037 The People,
 v.
 Kevin Craig.
Cause called and argued by Katarzyna Kozik, counsel for appellant, and Violet Lee, counsel for respondent. Cause ordered submitted.

A107323 Waukeen McCoy et al.,
 v.
 Jeremy Charles Pack.
Cause called and argued by Zak Best, counsel for appellant, and Aaron Minnis, counsel for respondent. Cause ordered submitted.

Justice Margulies approached the bench after this case.

A105302 The People,
 v.
 Larry McDougal.
The panel for this case is now comprised of Stein, J., Swager, J. and Margulies, J. Cause called and argued by Gabriel Bassan, counsel for appellant, and Ryan McCarroll, counsel for respondent. Cause ordered submitted.

Justice Swager left the bench after this case. The panel is now comprised of Marchiano, P.J., Stein, J., and Margulies, J. for the next cases.

A105093 The People,
 v.
 Ghazal B.
Cause called and argued by Deanna Lamb, counsel for appellant, and Christopher Grove, counsel for respondent. Cause ordered submitted.

A105625 City and County of San Francisco et al.
A106230 v.
A106708 Boyd Hotel et al.
Cause called and argued by Neli Palma, counsel for appellants, and Gordon McAuley, counsel for respondents. Cause ordered submitted.

A105638 Insurance Commissioner,
A106198 v.
Golden Eagle Insurance Company;
Kevin Curry et al.
Cause called and argued by Rick Bove, counsel for appellants, and Cynthia Larsen, counsel for respondent. Cause ordered submitted.

Court Adjourned.

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, March 3, 2005

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Swager, J., and Margulies, J.; and B. Robbins, Deputy Clerk.

A101953 Colin Scott,
v.
Emily Scott.
Cause called and argued by Colin Scott, appellant in pro per, and Ann F. VanDerPol, counsel for respondent. Presiding Justice Marchiano denied Mr. Scott's application requesting permission to submit exhibit, filed February 25, 2005, and denied the application for leave to file amici curiae brief in support of Colin Scott, filed March 2, 2005. Cause ordered submitted.

A105988 Henry L. Garcia,
v.
Prentice & Scott, et al.
Cause called and argued by Athena Roussos, counsel for appellant, and Peter Linn, counsel for respondent. Cause ordered submitted.

A106607 Douglas E. Freeman.
v.
Palisades Trusts, et al..
Cause called and argued by James R. Rose, counsel for appellants, and Randall E. Strauss, counsel for respondent, via teleconference. Cause ordered submitted.

Court adjourned.

No cases were scheduled to be heard on Friday, March 4, 2005.

Thursday, March 3, 2005 (continued)

Division Two

A105463 – Mary Carroll v. Orrick, Herrington & Sutcliffe, LLP.

The judgment is affirmed. Orrick is awarded costs. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

Division Three

A105763 – The People v. John Jeffrey Caudle.

A107416 – In re John Jeffrey Caudle, on Habeas Corpus.

The judgment is affirmed and the petition is denied. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

A108029 – The People v. Angel Lopez Ibarra.

Defendant was at all times represented by counsel. We find no issue warranting further consideration and affirm the judgment. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication)

Division Five

A107455 – Estate of Marvin Jones, Deceased. Mark J. Jones v. Shiren McStadden, as Public Administrator, etc.

The order is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

Friday, March 04, 2005

Division One

A105125 – University of California Board of Regents v. Harry J. Williby.

The petition for rehearing is denied. Marchiano, P.J.

Division Two

A108033 – The People v. William Michael Albertson.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

Division Four

A107275 – The People v. Richard Henry.

The order denying the petition for error coram nobis is reversed and the cause is remanded to the trial court to consider the petition on the merits or in the light of any other procedural defenses the People may assert. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication)

A106817 – Verada Reynolds v. One Legal, Inc.

The order denying the petition to compel arbitration is reversed. The court is directed to enter a new order granting the motion to compel arbitration consistent with the view concerning arbitration costs set forth in this opinion. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication)

A106793 – In re Leon L., a Person Coming Under the Juvenile Court Law. The People v. Leon L.

The orders of the juvenile court are affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication)

Division Five

A104985 – The People v. James Keithly Sampson.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

Monday, March 07, 2005

Division One

A104324 – Janet Robbins v. Joseph Alibrandi, et al.; Angelo Perone, et al.

By the Court: The written opinion which was filed on February 4, 2005, has now been certified for publication pursuant to rule 976(b) of the California Rules of Court, and it is ordered published in the official reports. Marchiano, P.J. (Certified for Publication)

A104055 – Ronald T. Mingo v. Oakland Unified School District.

By the Court: The petition for rehearing is denied. Marchiano, P.J.

A105493 – In re the Marriage of Jeffrey Lamar and Sandra Lee Cooper. Sandra Lee Cooper v. Jeffrey Lamar Cooper.

The order denying appellant's motion to set aside the judgment and imposing sanction is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

Division Four

A106294 – In re Israel G., a Person Coming Under the Juvenile Court Law. Sonoma County Human Services Department v. Angelina A.

We affirm the juvenile court's order terminating appellant's parental rights. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication)

A104490, A105073 – Tim Morgan v. Gale Moline et al.

We affirm the judgment in its entirety. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication)

Division Five

A107065 – Shirley Remmert v. Hisham Al-Zaghari.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

Tuesday, March 8, 2005

Division One

A106536 – The People v. Tony Alan Paul.

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication)

A098073, A100745 and A104701 – Margie McRae v. State of California Department of Corrections.

A098330 and A098910 – Margie McRae v. Bruce Wiltse, et al.

By the Court: On the Court's own motion, appeal number A104701 is consolidated with appeal numbers A098073, A098330, A098910 and A100745. Stein, Acting P.J.

Division Two

A100308 & A101041 – Mannie Joel et al., v. The Hospital Committee for the Livermore-Pleasanton Areas et al.

The judgment and the order denying the motion for attorney fees are affirmed. In the interest of justice, the parties shall each bear their own costs and attorney fees on appeal. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

A108120 – The People v. Albert T. Ruiz.

Our independent review of the record reveals no arguable appellate issues. Accordingly, we affirm the judgment of the trial court. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

Division Four

A106077 – Goodrich Corporation et al., v. Autoliv ASP, Inc., et al.

OEA Aerospace, Inc., v. Universal Propulsion Company, Inc.

The judgment is reversed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication)

Tuesday, March 8, 2005 (continued)

Division Five

A105917 – The People v. James David Hoffman.

The judgment is affirmed. Gemello, J. I Concur: Simons, J. (See dissenting opinion by Jones, P.J.) (Not for Publication)

A105380 – The People v. Glenn Alan Kucharski.

The judgment is affirmed. Gemello, J. I Concur: Stevens, J. (See concurring opinion by Jones, P.J.) (Not for Publication)

Wednesday, March 09, 2005

Division One

A106040 – The People v. Wesley Allen Johnson.

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication)

A104563 – The People v. Gilbert Layson.

The judgment and sentence are affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication)

Division Two

A104602 – Pacific Telesis Group, Inc., v. Franchise Tax Board.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

Division Three

A104076, A104077 – John Garamendi, as Insurance Commissioner, etc., v. Golden Eagle Insurance Company; Puali Systems, Inc.

The orders from which these appeals were taken are affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Certified for Publication)

A104638, A105641 – Mark J. Maccarra Builders, Inc., et al., v. Ron Vidal et al.

The judgment dismissing Maccarra's complaint and the order awarding attorney fees and costs to defendants are affirmed. Defendants shall recover their costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

Wednesday, March 9, 2005 (continued)

Division Five

A108662 – In re the Marriage of Gerald Taber and Emiliana Taber. Gerald Taber v. Emiliana Taber.

By the Court: Pursuant to this court's order of February 3, 2005, and appellant having failed to cure the default regarding his failure to pay the filing fee, the appeal is dismissed. Jones, P.J.

A104525 – The People v. Edward Barry Armstrong.

The judgment is vacated and the matter remanded for proceedings consistent with this opinion. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

A106272 – The People v. Joseph James Allen.

The order modifying the conditions of probation is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

A105693 – The People v. Ernesto Ramirez.

The conviction for violating Health and Safety Code section 11350, subdivision (a), is reversed. The judgment is otherwise affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication)

Thursday, March 10, 2005

Division One

A106564 – The People v. Paul O’Leary.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

A106629 – In re Ryan H., a Person Coming Under the Juvenile Court Law. The People v. Ryan H.

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

A107957 – The People v. Martin T. King.

The second restitution fine, imposed when the trial court sentenced defendant to state prison, is stricken. The trial court is ordered to prepare an order so reflecting. In all other respects the judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication)

A106285 – In re Jorge M., a Person Coming Under the Juvenile Court Law. The People v. Jorge M.

The imposition of a \$20.00 court security fee is stricken. The minute order for the dispositional hearing is modified to strike conditions 41 through 44 of defendant’s probation, and to provide instead that defendant cannot wear, display, use or possess any article of clothing, insignia, emblem, button, badge, hat, scarf, bandana, or any other indicia known to defendant to represent affiliation with or membership in a “criminal street gang” as defined in the section 186.22, subdivision (f) of the Penal Code, or to associate with any person known by the minor to be a member of a criminal street gang, or present at any place known by the minor to be frequented by criminal street gang members. In all other respects the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

A106461 – Scott W. Bray v. California Department of Transportation.

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

Thursday, March 10, 2005 (continued)

Division Four

A105432 – Terraces of Sausalito Homeowners Association v. David D. Brayshaw.

The order awarding attorney fees and costs to the Association is reversed to the extent it awards the Association \$539.22 in costs. The judgment and attorney fee award are affirmed in all other respects. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication)

A105431 – David D. Brayshaw v. Terraces of Sausalito Homeowners Association.

The order granting attorney fees and costs is affirmed. Costs on appeal are awarded to the Association in an amount to be determined by the trial court. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication)

Division Five

A106305 – Lisa Honig v. San Francisco Panning Department et al.; David Robins et al., R.P.I.

The dismissal of appellant's petition is affirmed. Costs on appeal shall be awarded to all respondents. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Certified for Publication)

Friday, March 11, 2005

Division One

A104453 – The People v. Mailliard Lucien King.

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication)

A098529 – RAF Enterprises, et al., v. Trident, LLC, et al.

By the Court: The petition for rehearing is denied. Stein, Acting P.J.

A105268 – The People v. Sunday Sonjia Smith.

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication)

Division Four

A100310 – Ellen Dixon, et al., v. City of Livermore.

The Court: The petition for rehearing filed by plaintiffs and respondents on March 1, 2005, is denied. The opinion filed herein on February 10, 2005, and ordered published February 23, 2005, is ordered modified as follows: (See order) There is no change in judgment. Sepulveda, Acting P.J. (Certified for Publication)

A105452 – Howarch Herships v. Jul Niemier, et al.

Alma Jean Caldwell v. Jul Niemier, et al.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication)

A107998 – The People v. Dekelton Laroy Boykins.

The judgment is affirmed. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication)

Division Five

A106964 – In re Anthony H., a Person Coming Under the Juvenile Court Law. The People v. Anthony H.

The order is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication)

Monday, March 14, 2005

Division One

A106219 – Estate of Ann E. Shiffler, Deceased. Peter Bogardus, as Co executor, etc., et al., v. Robert A. Belluomini.

Finding no abuse of discretion, we affirm the probate commissioner's order. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

Division Two

A104389 – The People v. Carolee Camacho.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

Division Four

A106867 – Santa Ana King v. Grosvenor Airport Associates.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication)

Division Five

A106439 – In re Tramaine W., a Person Coming Under the Juvenile Court Law. The People v. Tramaine W.

The disposition order is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

A105221 – Thomas Mark Deal v. Patricia Kim Deal.

By the Court: The opinion filed on February 18, 2005, is modified as follows: (See opinion) Appellant's petition for rehearing is denied. This order does not effect a change in the judgment. Jones, P.J. (Not for Publication)

Tuesday, March 15, 2005

Division Two

A104527 – The People v. Lawrence Clayton Jelks.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Tuesday, March 15, 2005

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Lambden, J., Ruvolo, J. and I. Santos, Deputy Clerk.

- A104571 The People,
 v.
 Michael Ford.
Cause called and argued by Richard Doctoroff, counsel for appellant, and Ryan McCarroll, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A104465 Don Carney,
 v.
 San Francisco Unified School District et al.
Cause called and argued by Michael Silberstein, counsel for appellant, and Kimberly Bliss, counsel for respondent. Cause ordered submitted.
- A105702 Steven Egri,
 v.
 SWT Corporation et al.
Cause called and argued by James Dombroski, counsel for appellant, and Robert Begley, counsel for respondent. Cause ordered submitted.
- A107500 In re Sean W., a Person Coming Under the Juvenile Court Law.
 The People,
 v.
 Sean W.
Cause called and argued by Eleanor Kraft, counsel for appellant, and Susan Burrell of the Youth Law Center who filed an amicus curiae brief on behalf of appellant, and Michael Banister, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Haerle, Acting P.J., Lambden, J., Ruvolo, J. and I. Santos, Deputy Clerk.

A099366/
A099499 The People,
 v.
 Marjorie Knoller.
Cause called and argued by Dennis Riordan, counsel for appellant, and Amy Haddix, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A106343 West Bay Builders, Inc.,
 v.
 Liberty Union High School District;
 Lathrop Construction Associates, RPI.
Cause called and argued by Tim McInerney, counsel for appellant, and Gregory Wedner, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Justice Lambden left the bench and Presiding Justice Kline joined the bench to participate in the remainder of the calendar.

A106286 In re Drew H., a Person Coming Under the Juvenile Court Law.
 The People,
 v.
 Drew H.
Cause called and argued by Laretta Komlos, counsel for appellant, and Martin S. Kaye, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A104463 In re Robert G., a Person Coming Under the Juvenile Court Law.
 The People,
 v.
 Robert G.
Cause called and argued by Jeffrey Glick, counsel for appellant, and Martin S. Kaye, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court recess until Wednesday, March 16, 2005 at 9:30 a.m.

Tuesday, March 15, 2005 (continued)

Division Three

A105827 – In re Elese H., a Person Coming Under the Juvenile Court Law. Lake County Department of Social Services v. LaDonna H., et al.

By the Court: The petitions for rehearing are denied. McGuiness, P.J.

A107504 – The People v. Scott William Stewart.

The judgment and sentence imposed are affirmed. McGuiness, P.J. I Concur: Corrigan, J. (See concurring opinion by Pollak, J.) (Not for Publication)

A107912 – Guardianship of E.H., a Minor. Ladonna H., v. Myra M.

By the Court: Appellant's petition for rehearing is denied. The opinion filed herein on February 22, 2005, is modified to delete the award of costs to Myra M. This modification affects the disposition. Corrigan, Acting P.J. (Not for Publication)

A103075 – The People v. Stacey D. Langley.

The judgment is affirmed. McGuiness, P.J. I Concur: Parrilli, J. (See concurring opinion by Pollak, J.) (Not for Publication)

Division Four

A107598 – The People v. Carl Anthony Suarez.

Judgment affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication)

A107701 – The People v. Valerie Noel Elkin.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication)

Wednesday, March 16, 2005

Division One

A105093 – In re Ghazal B., a Person Coming Under the Juvenile Court Law.

The People v. Ghazal B.

A105322 – In re Ghazal B., a Person Coming Under the Juvenile Court Law.

The People v. Mahmood B., et al.

The dispositional order committing defendant to CYA is affirmed. The order requiring the parents to reimburse the county for the costs of the minor's maintenance is reversed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

Division Two

A107615 – In re Jordan D., a Person Coming Under the Juvenile Court Law.
Contra Costa County Children and Family Services v. Derrick D.

The judgment terminating Father's parental rights is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO
Wednesday, March 16, 2005

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kline, P.J., Lambden, J., Ruvolo, J., and S. Wheeler, Deputy Clerk.

- A105330 In re Justin J., a Person Coming Under the Juvenile Court Law.
The People,
v.
Justin J.
Cause called and argued by Walter K. Pyle, counsel for appellant, and Ronald Niver, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A101381 The People,
v.
Michael Key, Jr.
Cause called and argued by Victor Roy Blumenkrantz, counsel for appellant, and Sharon G. Birenbaum, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A103878 Peter T. Mendoza,
v.
Town of Ross, et al.
Cause called and argued by Robert Jacob Jaffe and Jonathan Bornstein, counsels for appellant, and Linda Ann Tripoli, counsel for respondents. Cause ordered submitted.
- A104552 Eileen Dorin,
v.
Robin Slade Weitzen, et al.
Cause called and argued by Robert Kingsbury Lane, counsel for appellants, and Eileen Dorin, in propria persona. Cause ordered submitted.
- A104596 Holly Baxter, et al.,
v.
Wilson & Kratzer Mortuaries.
Cause called and argued by David Charles Phillips, counsel for appellants, and

Nancy Sullivan Walter, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Wednesday, March 16, 2005 (continued)

Division Four

A109069 – Philbrick B., v. The Superior Court of San Francisco County; San Francisco Department of Human Services, R.P.I.

The petition for writ of mandate is denied on the merits. (§ 366.26, subd. (l)(1)(C); Cal. Rules of Court, rule 38.1(d); *In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991.) Our decision is final immediately. (Cal. Rules of Court, rule 24(b)(3).) Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication)

Division Five

A105483 – Sunscript Pharmacy Corporation v. Timothy B. Cassidy.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

A105483 – Sunscript Pharmacy Corporation v. Timothy B. Cassidy.

By the Court: Oral argument having been deemed waived, or not timely requested, the cause is ordered submitted. Jones, P.J.

Thursday, March 17, 2005

Division Two

A107278 – The People v. Terri Ann Whittington.

A108777 – In re Terri Ann Whittington, on Habeas Corpus.

Accordingly, the petition for writ of habeas corpus is denied. Accordingly, the judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication)

A105259 – The People v. Gregory Lamont Cooper.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

Division Three

A108780 – Robert B., v. The Superior Court; Contra Costa County Employment and Human Services Department, Bureau of Children and Family Services, R.P.I.

The petition for extraordinary relief is denied on the merits. (Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Because the permanency planning hearing is set for March 23, 2005, our decision is immediately final as to this court. (Cal. Rules of Court, rule 24(b)(3).) Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication)

A107743 – In re Antonio M., a Person Coming Under the Juvenile Court Law. The People v. Antonio M.

The order is affirmed. McGuinness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication)

Division Four

A104529 – The People v. Mark Serrano.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication)

Division Five

A107564 – The People v. Alfonso Sandoval.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION FIVE

March 17, 2005

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J., Simons, J., Gemello, J., Allen Reyes, Mary P. Quilez, Deputy Clerk and CHP Officer Allen Reyes, Bailiff.

- A104153 Andrew Luce
 v.
 Terence Hanrahan
 Cause called and argued by Gregory W. Poulos, counsel for appellant and by Kim O. Dincel, counsel for respondent. Cause ordered submitted.
- A106244 Valerie Tashjian
 v.
 Ralph Tashjian
 Cause called and argued by Daniel P. McLoughlin, counsel for appellant and by James Cohen, counsel for respondent. Cause ordered submitted.
- A103163 Eric Carlson
A103820 v.
 Patty Carlson
 Cause called and argued by Gregory R. Ellis, counsel for appellant, and by Garrett C. Dailey, counsel for respondent. Cause ordered submitted.
- A104903 Hayward Area Planning Association
 v.
 City of Hayward
 Cause called and argued by Jewell Hargleroad, counsel for appellant and by Kristen A. Jensen, counsel for respondent. Cause ordered submitted.
- A105276 Carol L. Slater
A105447 v.
A105960 Franchise Tax Board, et al.
Related case Cause called and argued by Ed Frey, counsel for appellant, and by Paul D.
A106921 Gifford, Deputy Attorney General, Frank Edward Zotter, Deputy County

Counsel, and Klaus J. Kolb, counsel for respondents. Cause ordered submitted.

- A107322 John Westra, et al.
v.
Marcus & Millichap Real Estate Investment Brokerage Co.
Cause called and argued by William Hanson Norman, counsel for appellants and by Erik Miller, counsel for respondent. Cause ordered submitted.
- A106642 The People
v.
Ross Goff
Cause called. Katherine Demgen, counsel for appellant did not appear. Chris Grove, Deputy Attorney General, appeared as counsel for respondent. Cause ordered submitted.
- A106155 Sheryl Land
v.
Alexander L. San
Cause called and argued by Sheryl Land, appellant appearing in pro per, and Paul Conroy and Peter M. Callahan, counsel for respondent. Cause ordered submitted.
- A105007 Nicholas E. Toussaint, et al.
v.
Clifford R. Fraser, et al.
Cause called and argued by Richard J. Hicks, counsel for appellant and by John Fenton Friedmann, counsel for respondent. Cause ordered submitted.
- A105661 Louise Levitin, et al.
v.
Thomas Brown et al.
Cause called and argued by Kenneth R. Morris, counsel for appellants and by Rebecca L. Cachia-Riedl, counsel for respondents. Cause ordered submitted.
- A105977 James Kennedy
v.
Banc of America Securities, et al.
Cause called and argued by Richard H. Carlson, counsel for appellant and by Greg J. Richardson, counsel for respondents. Cause ordered submitted.
- A106429 The People
v.
Alan W.

Cause called and argued by Jonathan Soglin, counsel for appellant and by Michael Banister, counsel for respondent. Cause ordered submitted.

Court adjourned at 2:45 p.m.

Friday, March 18, 2005

Division One

A098073, A100745, and A104701 – Margie McRae v. State of California Department of Corrections.

A098330, A098910 – Margie McRae v. Bruce Wiltse et al.

The judgment, therefore, is reversed. The orders awarding Dr. McRae postjudgment and prejudgment attorney fees are reversed. The order awarding costs to the individual defendants is affirmed. The matter is remanded to the trial court to award costs to the Department, to the extent that those costs are not duplicative of costs already awarded to the individual defendants. The defendants are awarded their costs on appeal. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Certified for Publication)

Division Three

A107167 – In re Martin D., a Person Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services v. Roumen D.

The appeal is dismissed as moot. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication)

Monday, March 21, 2005

Division One

A106800 – The People v. Kathryn Louise Badon.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

A106273 – The People v. Samuel F. Tewolde.

The judgment is reversed. The matter is remanded to the trial court for further proceedings consistent with *Blakely*. This reversal is solely for resentencing or to allow the prosecution to seek a jury trial on the aggravating factors and does not affect the order for blood and saliva samples under section 296, or any other provision of the judgment other than the aggravated term for the assault. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

Division Two

A104690 – Liora Keller v. Howard Ocken.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

A103410 – The People v. Kevin Leon Morris, Sr.

The matter is remanded for resentencing in light of *Blakely, supra*, ___ U.S. ___ [124 S. Ct. 2531], and with directions to stay execution of Morris's sentence for assault, prepare an amended abstract of judgment, and forward a copy to the Department of Corrections. The petition for writ of habeas corpus is denied. In all other respects, the judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

Division Three

A105950 – Elizabeth Dorr v. City and County of San Francisco.

The appeal is dismissed. Appellant shall pay respondent's costs on appeal. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication)

A103729 – Rosalie Nuanes v. Insignia Financial Group, Inc.; Marshall G. Berol, Objector and Appellant.

The order approving the proposed settlement is vacated. The cause is remanded for further proceedings. Costs to Appellant. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication)

Monday, March 21, 2005 (continued)

Division Three

A105873 – Rosalie Nuanes v. Insignia Financial Group, Inc. et al.; Marshall G. Berol, Objector and Appellant.

The trial court's order requiring Vincent T. Gresham to pay the fees of referee Katherine Gallo is reversed. Costs to appellants. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication)

A102479 – Hansjoachim Neis v. Regents of the University of California.

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication)

A107733 – Douglas R. Slain v. Christina Clark.

The order is affirmed. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

Division Four

A106485 – In re L.P. et al., Persons Coming Under the Juvenile Court Law. Solano County Department of Health and Social Services v. Aquilla P.

The disposition order is affirmed. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication)

A105601 – The People v. Marion Morris.

The judgment is affirmed. Kay, P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication)

A106723 – Dominic O' Connor v. Ofer Baharav.

The order granting an injunction and awarding attorney fees is reversed. The parties shall bear their own costs on this appeal. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication)

Monday, March 21, 2005 (continued)

Division Five

A105977 – James Kennedy v. Banc of America Securities et al.

The judgment of dismissal is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication)

A106642 – The People v. Ross Goff.

The judgment is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication)

A106429 – In re Alan W., a Person Coming Under the Juvenile Court Law. The People v. Alan W.

The order of the trial court affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

Tuesday, March 22, 2005

Division One

A102155 – The People v. Melvin Simmons.

By the Court: The petition for rehearing is denied. Swager, Acting P.J.

Division Two

A103928 and A105004 – Rollover Car Cases.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

A106041 – The People v. Michelle Lee Lovelace.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

Division Three

**A106293 – In re Kiana J., a Person Coming Under the Juvenile Court Law.
Alameda County Social Services, Children and Family Services v. Donnelle M.**

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

A106369 – Leszek Forczek v. Julie Forczek Thomson.

The order is affirmed. Respondent and real party in interest are to recover their costs on appeal, if any. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

Division Four

A107297 – The People v. Xavier Terry.

The judgment is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, March 22, 2005

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Kay, P.J., Reardon, J. and Sepulveda, J.; Pamela Aguilar, Deputy Clerk; CHP Officer Aron Ching, Bailiff.

A104726 People
 v.
 Jelani Steward
Cause called. Kathryn Seligman argued for appellant Steward. Michelle Allen argued for respondent. Cause submitted.

At this point, the Court reconstituted itself to include Kay, P.J., Reardon, J., and Rivera, J.

A105943 John Hsu
 v.
 California Department of Personnel Administration et al.
Cause called. Appellant John Hsu argued on his own behalf. Raymond Hamilton argued for respondent Department of Toxic Substance Control. Edmund Brehl argued for respondent Department of Personnel Administration. Cause submitted.

The Court adjourned at 10:24 a.m.

Tuesday, March 22, 2005 (continued)

Division Five

A104584 – The People v. Lawrence R. Kirk.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication)

Wednesday, March 23, 2005

Division One

A101953 – In re the Marriage of Colin and Emily Scott. Colin Scott v. Emily Parsons.

Accordingly, the provisions of the custody modification order filed on January 10, 2003, that directed appellant to “immediately commence therapy” with one of three listed therapists (Paragraph 2), and provided that “no visits shall occur until MS. RODRIGUEZ has the approval of DR. MARY KRENTZ who has conferred with [appellant’s] therapist prior to same” (the last sentence of Paragraph 3), are declared invalid. The case is remanded to the trial court with directions to strike the invalid provisions or modify them in accordance with the views expressed herein. In all other respects, the judgment is affirmed. The parties are to bear their own costs on appeal. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

A103935 – The People v. Marvin Hearne.

We therefore conclude that defendant did not knowingly and voluntarily waive credit for time served after his arrest for violation of probation. The case is remanded to the trial court with directions to amend the abstract of judgment to grant defendant credit for time served from the date of his arrest for violation of his probation until the date of sentencing. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

A102551 – In re the Marriage of Stanley T. Hino and Christine Schmid. Stanely T. Hino v. Christine Schmid.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

Division Three

A105312 – Microsoft Corporation v. Franchise Tax Board.

By the Court: Since this court’s February 28, 2005 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. McGuiness, P.J.

A107700 – The People v. Jose Pepe Quintero.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

Wednesday, March 23, 2005 (continued)

Division Three

A107291 – The People v. William B. Mitchell.

The judgment is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Certified for Publication)

A105312 – Microsoft Corporation v. Franchise Tax Board.

By the Court: Respondent's petition for rehearing is denied. The opinion filed herein on February 28, 2005, is modified as follows: (See order) This modification affects the disposition. McGuiness, P.J. (Not for Publication)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, March 23, 2005

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness P.J., Parrilli, J., Pollak J., and F. Abad, Deputy Clerk.

A101698 In re Brittany K. et al.
A102668 Social Services Agency,
A103013 v.
A103987 Ellen J.
Cause called and argued by Carole Greeley, counsel for appellant, and Bruce Goldstein, counsel for respondent. Cause ordered submitted.

A102803 Third Eye Blind, et al.,
v.
North American Specialty Insurance Co., et al.
Cause called and argued by Dennis Cusack, counsel for appellants, Ralph Tarr, counsel for respondent Provident Financial Management, and Linda Klamm, counsel for respondent Near North Entertainment Insurance Services. Cause ordered submitted.

Justice Pollak left the bench and Justice Corrigan joined the bench.

A104993 The People,
v.
Jack Paul Ervin.
Cause called and argued by Thea Greenhalgh, counsel for appellant, and Christopher Grove, counsel for respondent. Cause ordered submitted.

A101525 Max Schoenfeld, et al.,
v.
Heidi Zwakenberg, et al.
A102233 Tibor Schoenfeld, et al.,
v.
Alfred Grabisch.
A103051 Max Schoenfeld,
v.
Alfred Schoenfeld.
Cause called and argued by James Wagstaffe, counsel for appellants/respondents Heidi Zwakenberg, et al., Adam Gruen, counsel for respondent Max Schoenfeld, and Bernhard Bergesen, counsel for respondents/appellants Tibor Schoenfeld, et al. Cause ordered submitted.

Justice McGuinness left the bench and Justice Pollak joined the bench.
Justice Corrigan presided over the remainder of the calendar.

A102786 The People,
v.
Jesus Santillano.
Cause called and argued by Donald Bergerson, counsel for appellant, and Michelle Allen, counsel for respondent. Cause ordered submitted.

Justice Corrigan announced the panel for the following case consisted of Justice Parrilli, Justice Pollak, and herself.

A106728 Martin Cantu,
v.
Pacesetter Corporation.
Cause called and argued by David Kronbluh, counsel for appellant, and Sharon Kinsey, counsel for respondent via teleconferencing. Cause ordered submitted.

Court adjourned until 1:30 p.m.

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, March 23, 2005

Court reconvened at 1:30 p.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: Corrigan, acting P.J., Parrilli, J., Pollak J., and C. Turner, Deputy Clerk.

A102260 Nicholas Francies,
A103738 v.
 William Kapla.
Cause called and argued by Robert Moore, counsel for appellant/cross-respondent, and Alan Dell'Ario, counsel for respondent/cross-appellant. Cause ordered submitted.

A102651 Roalisa Harden,
 v.
 Advanta Mortgage Corp., USA, et al.
Cause called and argued by Roalisa Harden, appellant in propria persona, and Glenn Wechsler, counsel for respondent via teleconferencing. Cause ordered submitted.

Court adjourned.

Wednesday, March 23, 2005 (continued)

Division Four

A103990 – Union Pacific Railroad Company v. Santa Fe Pacific Pipeline, Inc., et al.

Order Modifying Opinion and Denying Rehearing and no change in judgment. The Court: It is ordered that the opinion filed herein on February 23, 2005, be modified as follows: (See order) There is no change in the judgment. Appellant's petition for rehearing is denied. Kay, P.J. (Not for Publication)

A106901 – The People v. Marco Antonio Zertuche.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication)

A104941 – The People v. Angel Lopez Jacobo.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication)

A104951, A106446, and A107347 – North Pacifica, LLC v. City of Pacifica.

The judgment is reversed. The postjudgment order awarding NP attorney fees and costs is reversed. The matter is remanded to the trial court with directions to enter judgment in favor of the City on all causes of action. The City shall recover its costs incurred on appeal upon timely application in the trial court. (Cal. Rules of Court, rule 27(d).) Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication)

A106829 – The People v. Marlon Ruff.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication)

Division Five

A106171 – Farmers Insurance Exchange et al., v. Robert Allen.

The judgment is affirmed. Respondents shall recover their costs on appeal. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

A105479 – The People v. Luis Alberto Cajina.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Certified for Partial Publication)

Thursday, March 24, 2005

Division One

A106054 – The People v. Larry Jeffrey Owens.

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication)

A105638 – Insurance Commissioner v. Golden Eagle Insurance Company; Kevin Curry, et al., Claimants and Appellants.

A106198 – Insurance Commissioner v. Golden Eagle Insurance Company; Kevin Curry, et al., Claimants and Appellants.

By The Court: On the Court's own motion, the above-referenced appeals are hereby consolidated for decision. Marchiano, P.J.

A106607 – Douglas E. Freeman v. Palisades Trusts et al.

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

A107323 – Waukeen McCoy et al., v. Jeremy Charles Pack.

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

Division Two

A106584 – The People v. Annette Tavares.

The appeal regarding appellant's conviction under count 1 of the information is dismissed as unappealable. The remainder of the judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

Thursday, March 24, 2005 (continued)

Division Three

A106231 – Louis A. Gordon v. Don Horsley, et al.

The order denying the writ petition is reversed. The court is directed to consider the merits of the petition. Gordon shall recover his costs on appeal. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

A104362 – The People v. Carlos Sanchez Delgado.

The September 19, 2003 order of commitment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

A107597 – The People v. Nathaniel Holland.

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication)

A102651 – Roalisa Harden v. Advanta Mortgage Corp., USA et al.

The judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

Division Four

A106212 – In re Brock Y., a Person Coming Under the Juvenile Court Law. Contra Costa County Social Services Department v. Stephanie Y.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication)

Friday, March 25, 2005

Division One

A102291 and A102824 – The People v. Winnfred Wright et al.

Order Modifying Opinion and Denying Rehearing and change in judgment. The Court: After consideration of the defendant's petition for rehearing, it is ordered that the opinion filed herein on February 23, 2005, be modified in the following particulars: (See order) There is a change in the judgment. The petition for rehearing is denied. Marchiano, P.J. (Not for Publication)

A109501 – In re Richard Gomez, on Habeas Corpus.

The Court:* Therefore, the petition is granted to the extent that the Superior Court of Contra Costa County is directed to forthwith amend the judgment in *People v. Gomez* (Super. Ct. Contra Costa County, 2001, No. 021647-7) to reflect credit for time spent in custody of 677 days, 589 days of actual custody and 88 days of conduct credits, and to thereafter transmit an amended abstract of judgment to the Department of Corrections. This opinion is final as to this court immediately, and the clerk of this court shall immediately remit a certified copy of it to the superior court for filing. (Not for Publication)

* Before Marchiano, P.J., Swager, J., and Margulies, J.

A100258 and A097784 – American Financial Services Association v. City of Oakland, et al.

By the Court:* In accordance with the opinion of the California Supreme Court in *American Financial Services Association v. City of Oakland, et al.*, Case No. S119869, the judgment of the trial court is reversed and the matter is remanded to the trial court with directions to enter a judgment in favor of American Financial Services Association declaring that Oakland's "Anti-Predatory Lending Ordinance" (Ord. No. 12361 CMS), and the amendments to its Linked Banking Services Ordinance and resolution of its Redevelopment Agency enacted simultaneously therewith, are preempted by state law and invalid. Costs to plaintiff. Marchiano, P.J.

* Before Marchiano, P.J., Stein, J., and Margulies, J.

A108275 – In re Robert F., a Person Coming Under the Juvenile Court Law. The People v. Robert F.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

A106347 – Central Building, LLC v. Don D. Cooper et al.

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Certified for Publication)

Friday, March 25, 2005 (continued)

Division Four

A103021 – Power Standards Lab, Inc., v. Federal Express Corporation.

The judgment is reversed. The parties shall bear their respective costs of appeal. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Certified for Publication)

A104010 – The People v. Craig Dille et al.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication)

Division Five

A105301 – The People v. John Allen Cancilla.

The sentence imposed in Marin County case number SC-109357A is vacated. The matter is remanded with directions to prepare and forward to the Department of Corrections a corrected abstract of judgment reinstating the sentence imposed on July 23, 2003, in Contra Costa County case number 5-030748-8. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication)

Monday, March 28, 2005

Division One

A104946 and A105134 – Terrell Joseph et al., v. San Francisco Housing Authority et al.

By the Court: The petition for rehearing is denied. Stein, Acting P.J.

Division Two

A107980 – The People v. Raymond Deshawn Green.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

A107500 – In re Sean W., a Person Coming Under the Juvenile Court Law. The People v. Sean W.

The matter is remanded to the juvenile court with directions to exercise its discretion in setting appellant's maximum term of confinement, pursuant to section 731, subdivision (b). The juvenile court's orders are otherwise affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Certified for Partial Publication)

A104571 – The People v. Michael Ford.

We affirm the trial court's order finding that appellant was in violation of his probation. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

Monday, March 28, 2005 (continued)

Division Three

A102786 – The People v. Jesus Santillano.

The judgment is affirmed. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication)

A106728 – Martin Cantu v. Pacesetter Corporation.

The order denying the petition to compel arbitration and stay the proceedings is affirmed. Cantu shall recover his costs on appeal. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication)

A104993 – The People v. Jack Paul Ervin.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

A103051 – Max Schoenfeld et al., v. Alfred Grabisch et al.

A102233 – Tibor Schoenfeld et al., v. Heidi Zwakenberg et al.

The order of the trial court in A102233 denying attorney's fees to Hajnalka Collins, Tibor Schoenfeld, and Zoltan Schoenfeld is affirmed. The order of the trial court in A103051 awarding attorney's fees to respondent Max Schoenfeld is reversed. Grabisch is awarded costs in both actions. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

A101525 – Max Schoenfeld et al., v. Heidi Zwakenberg et al.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

Monday, March 28, 2005 (continued)

Division Four

A105038 – The People v. Hugo Seferino Barragan.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication)

A109183 – Erica T., v. The Superior Court of San Mateo County; San Mateo County Human Services Agency, R.P.I.

The petition for extraordinary writ is denied on the merits. (§ 366.26, subd. (l)(1); Cal. Rules of Court, rule 38.1(h)(1); *In re Julie S.* (1996) 48 Cal. App.4th 988, 990-1.) As the section 366.26 hearing is set for May 16, 2005, our decision is final in this court immediately. (Cal. Rules of Court, rule 24(b)(3).) Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication)

A108293 – Chantal M. Sampogna v. Hao Xu.

To the extent that the appeal is untimely or purports to challenge nonappealable orders, we dismiss it. In all other respects, the judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication)

A103765 – The People v. Timothy John Donoghue.

We cannot, from this vantage point, determine whether failure to obtain jury determinations on aggravating factors was harmless beyond a reasonable doubt. We therefore vacate the upper term sentence on the second degree robbery conviction and remand to allow the prosecution the opportunity to decide whether to seek jury findings necessary to support the upper term. If the prosecution elects not to pursue jury findings, the court shall impose sentence. In all other respects, the judgment is affirmed. Reardon, J. I Concur: Kay, P.J. (See dissenting opinion by Sepulveda, J.) (Not for Publication)

Monday, March 28, 2005 (continued)

Division Five

A106941 – James Conway v. Ray Day.

The order of dismissal is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

A108037 – The People v. John Christopher Hanks.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication)

A106684 – The People v. Scott John Lowe.

The judgment is reversed. On remand, the trial court shall enter an order granting appellant's motion to suppress. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication)

A104985 – The People v. James Keithly Sampson.

The Court: The opinion filed March 4, 2005, is ordered modified as follows: (See Order) There is no change in the judgment. Appellant's petition for rehearing is denied. Jones, P.J. (Not for Publication)

Tuesday, March 29, 2005

Division One

**A105464 – In re Kevin P., a Person Coming Under the Juvenile Court Law.
Humboldt County Department of Health and Human Services v. Jon P.**

The jurisdictional findings and dispositional order with respect to the Department's section 387 petition are affirmed. The matter is remanded to the juvenile court with directions to order the Department to comply with the notice provisions of the ICWA. If, after proper notice under the ICWA, Kevin is determined to be an Indian child and the ICWA applies to these proceedings, Jon P. may then petition the court to invalidate orders which violated title 25 of the United States Code, sections 1911, 1912, and 1913. (See 25 U.S.C § 1914; Cal. Rules of Court, rule 1439(n)(1).) Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

Division Two

A105789 – Radian Guaranty, Inc. et al., v. John Garamendi.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Certified for Publication)

Division Three

A106063 – The People v. Eric Michael McGuire.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

A102803 – Third Eye Blind, Inc., et al., v. Near North Entertainment Insurance Services, LLC, et al.

The judgment is reversed. Respondents shall bear costs of the appeal. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Certified for Publication)

A101823 – Cathedral Hill Vistas Homeowners Association v. Bay Area Construction Framers.

By the Court: Since this court's February 28, 2005 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. McGuiness, P.J.

Tuesday, March 29, 2005 (continued)

Division Four

A103542 – The People v. Marcus Wendell Rougeau.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication)

A107344 – In re D.F., a Person Coming Under the Juvenile Court Law. The People v. D.F.

The order is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication)

A107364 – The People v. Germaine Latchison.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication)

A104726 – The People v. Jelani Steward.

Accordingly, that portion of the judgment showing defendant convicted of possessing cocaine in violation of Health and Safety Code section 11350, subdivision (a) and resisting a peace officer in the performance of his duties in violation of Penal Code section 148, subdivision (a)(1), is reversed, and the cause is remanded to the trial court in order that defendant may have an opportunity to withdraw his no contest pleas if he is so advised. The judgment of conviction is affirmed in all other respects. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication)

A109340 – Kelly W. v. The Superior Court of Mendocino County; Mendocino County Department of Social Services, R.P.I.

The petition for an extraordinary writ is denied on the merits. (§ 366.26, subd(l)(1)(C).) Our decision is final in this court immediately. (Cal. Rules of Court, rule 24(b)(3).) Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication)

A106795 – The People v. Malik Ali Muhammad.

Accordingly, the judgment is modified by striking the new section 1202.4(b) fine of \$400, and reducing the section 1202.45 fine to \$200. As so modified, the judgment is affirmed. The trial court is directed to prepare and forward to the Department of Corrections an amended abstract of judgment showing a section 1202.4(b) fine of \$200, noting that the section 1202.4(b) fine was imposed when probation was granted, and showing a section 1202.45 fine of \$200. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication)

Tuesday, March 29, 2005 (continued)

Division Four

A107497 – In re Darnell J., a Person Coming Under the Juvenile Court Law. The People v. Darnell J.

The disposition order is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication)

A107563 – The People v. Raymond L. Johnson.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication)

Division Five

A104153 – Andrew Luce v. Terence Hanrahan.

The judgment is reversed as to the unjust enrichment damage award only. The matter is remanded for the trial court to re-calculate damages on the evidence previously before it, in accord with the opinions expressed herein. In all other respects, the judgment is affirmed. Each side to bear its own costs. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

A104591 – The People v. Vernon Harris.

The judgment is modified to reflect a total of 709 days of presentence custody credit. In all other respects, the judgment is affirmed. The court shall amend the abstract of judgment and forward copies to the Department of Corrections. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication)

Wednesday, March 30, 2005

Division One

A104116 – The People v. Debbie Sue Taylor et al.

Accordingly, the judgments are affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication)

A106832 – The People v. Priscilla Wright.

The judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication)

A105302 – The People v. Larry Joe McDougal.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

A105798 – The People v. Sandra Fay Taylor.

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication)

A107741 – In re Julian A., a Person Coming Under the Juvenile Court Law. The People v. Julian A.

The judgment is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

Division Two

A105330 – In re Justin J., a Person Coming Under the Juvenile Court Law. The People v. Justin J.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

Wednesday, March 30, 2005(continued)

Division Three

A105414 – The People v. Gerardo Daniel Osorio Arzate.

The judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

A101995 – The People v. Kimberly Nicole Romby.

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication)

A103909 – The People v. Franklin Ryan Jr.

The judgment is reversed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

A101698, A102668, A103013 and A103987 – In re Brittany K., et al., Persons Coming Under the Juvenile Court Law. Sonoma County Human Services Department v. Ellen J.

The appeal in A102668 is dismissed as untimely. In all other respects, the orders, decisions and determinations of the juvenile court from which appellant appeals are affirmed in their entirety. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Certified for Partial Publication)

A102260 and A103738 – Nicholas Francies v. William Kapla.

The judgment in favor of Francies on the cause of action for invasion of privacy is reversed. The economic damages on the remaining causes of action should be increased to \$41,575 and the noneconomic damages should be increased to \$250,000. Hence, the judgment shall be modified to award Francies total damages of \$291,575. The judgment is affirmed in all other respects. Francies shall recover his costs on appeal. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Certified for Partial Publication)

A109178 – Darryl H., v. The Superior Court of Contra Costa County; Contra Costa County Children and Family Services Bureau, R.P.I.

The petition for extraordinary relief is denied on the merits. (See Cal. Const., art. VI § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Since the permanency planning hearing is set for May 11, 2005, our decision is immediately final as to this court. (Cal. Rules of Court, rule 24(b).) Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

A107279 – The People v. Lemar Randall.

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication)

Wednesday, March 30, 2005 (continued)

Division Three

A109254 – David Z., v. The Superior Court of Alameda County; Alameda County Social Services Agency, R.P.I.

The petition for extraordinary relief is denied on the merits. (Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Because the permanency planning hearing is set for May 16, 2005, our decision is immediately final as to this court. (Cal. Rules of Court, rule 24(b)(3).) McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

Division Four

A108031 – The People v. Jason Daniel Bartolomei.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication)

A106207 – In re Jack H., a Person Coming Under the Juvenile Court Law. San Francisco Department of Human Services v. Olivia., et al.

The appeals are dismissed. Kay, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication)

A108059 – The People v. Augustine Jaimes Mendoza.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication)

A095412 – The People v. Harold Wayne Taylor.

We affirm the judgments of conviction of second degree fetal murder and the second degree murder of Ms. Fansler. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication)

A105432 – Terraces of Sausalito Homeowners Association v. David D. Brayshaw.

Order Modifying Opinion and Denying Rehearing and no change in judgment. The Court: It is ordered that the opinion filed herein on March 10, 2005, be modified as follows: (See order) There is no change in judgment. The petitions for rehearing are denied. Kay, P.J. (Not for Publication)

Wednesday, March 30, 2005 (continued)

Division Five

A107455 – Estate of Marvin Jones, Deceased. Mark J. Jones v. Public Administrator.

By the Court: The petition for rehearing is denied. Jones, P.J.

A106299 and A106423 – Michael McMahan et al., v. City and County of San Francisco et al.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Certified for Publication)

A107212 – In re Eric G., a Person Coming Under the Juvenile Court Law. The People v. Eric G.

The order is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication)

A105997 – The People v. Ronald Dean Yandell.

The judgment is affirmed. Simons, J. I Concur: Stevens, J. (See Concurring opinion by Jones, P.J.) (Not for Publication)

A103163 and A103820 – In re the Marriage of Eric Carlson and Patty Carlson. Eric Carlson v. Patty Carlson.

The order denying the motion to set aside the judgment is reversed. The case is remanded with direction to the trial court to consider the merits of appellant's claims in accord with the opinions expressed herein and to make findings of fact based on evidence previously before it. Appellant shall recover costs on appeal. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)